STATE OF MICHIGAN

COURT OF APPEALS

STEPHEN M. ELFELT, Plaintiff/Counter-Defendant-Appellant,	UNPUBLISHED October 7, 2003
v	No. 239663 Manistee Circuit Court
DALE MUNK, Defendant/Counter-Plaintiff-Appellee.	LC No. 01-010200-AW

Before: Hoekstra, P.J., and Sawyer and Zahra, JJ.

PER CURIAM.

In this property dispute, plaintiff Stephen Elfelt appeals as of right from the trial court's order denying his motion for summary disposition and entering judgment in favor of defendant Dale Munk, quieting title to the disputed property. We reverse and remand.

This case concerns a ten-acre parcel of land in Manistee County that was subject to tax sales pursuant to the General Property Tax Act, MCL 211.1 *et seq*. On June 3, 1997, defendant obtained a tax deed for unpaid 1993 property taxes on the disputed property.[1] Defendant endeavored through the Manistee County Sheriff's department to serve the notice required by statute, MCL 211.140 (§ 140). Because defendant determined that the only recorded owner of the property was an Alice F. Gordon and that her last known address was in California, the notice was mailed as provided by subsection 140(3) of the act, but was returned "unclaimed." Thereafter, defendant pursued service by publication as provided by subsection 140(5). On November 12, 1997, a notice of publication was returned and filed with the Manistee County Treasurer. Also on that date, the sheriff signed a return of service attesting that "after careful inquiry, which has been continued from [June 16, 1997] until this date, I am unable to ascertain the whereabouts or post office address of Alice Gordon."

[1] On November 7, 1997, another tax deed was issued to correct an error on the deed issued on June 3, 1997.

In 1997 and 1998, tax sales on the property were conducted for unpaid property taxes for the years 1994 and 1995, respectively. Plaintiff purchased the tax sale interest for these years and was issued tax deeds on June 30, 1998, and July 15, 1999, respectively. On March 16, 2000, plaintiff sent to the Manistee County Treasurer funds sufficient to redeem defendant's tax deed interest in the property, but on April 4, 2000, the treasurer returned the money to plaintiff and indicated that defendant had completed service on Gordon and was the owner of the property.

Apparently, sometime in late 1999 or early 2000, both parties learned that Gordon had died in 1990. In addition to the redemption effort, plaintiff located three living heirs of Gordon, and on April 4, June 19, and July 28, 2000, plaintiff obtained from them quitclaim deeds, which were later recorded, for the disputed property. The record, however, does not reflect whether Gordon's estate was probated or whether the heirs ever were conveyed an interest in the property and, if so, by what means. Meanwhile, on April 17, 2000, the Manistee County Treasurer informed plaintiff that defendant had tendered payment sufficient to redeem plaintiff's two tax deeds to the property and directed plaintiff to prepare a quitclaim deed relinquishing his tax sales interest in the property.

On January 22, 2001, plaintiff filed the instant action for mandamus and to quiet title. Defendant answered and asserted affirmative defenses, including that plaintiff lacked standing, and also filed a counterclaim requesting, among other things, that title be quieted in his favor. Plaintiff moved for summary disposition in his favor pursuant to MCR 2.116(C)(7), (8), and (10),[2] and, in response, defendant sought judgment in his favor pursuant to MCR 2.116(I)(2).[3] After a hearing, the trial court found that plaintiff was without standing to challenge defendant's ownership interest in the property and that defendant had complied with the notice requirements of § 140. The trial court denied plaintiff's request for summary disposition and granted judgment in favor of defendant, quieting title in his favor. An order to that effect was filed on August 17, 2001. This appeal ensued.

On appeal, plaintiff sets forth four issues in his statement of questions involved. In essence, plaintiff argues that the trial court erred in finding that defendant had properly served notice according to the requirements of § 140, therefore the reconveyance period had not expired and plaintiff's tender of payment to redeem defendant's earlier tax deed should have sufficed to entitle plaintiff to judgment in his favor. Defendant responds by arguing that plaintiff lacks standing to challenge the service of the notice under § 140 and that, in any event, service was proper.

We review a trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Likewise, whether a party has standing, which is an issue of law, is reviewed de novo on appeal. *Crawford v Department of*

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[2] At the hearing on the motion, plaintiff withdrew the grounds for summary disposition pursuant to MCR 2.116(C)(7) and (8).

[3] At separate times, the mandamus count in the complaint was voluntarily dismissed and the counts in the counterclaim other than to quiet title were dismissed without prejudice.

Civil Service, 466 Mich 250, 255; 645 NW2d 6 (2002). Statutory interpretation is also reviewed de novo. *Lipman v William Beaumont Hosp*, 256 Mich App 483, 487; 664 N.W.2d 245 (2003).

First, we address defendant's claim that plaintiff did not have standing to challenge whether service of the notice was proper and find it without merit. In MCL 600.2932(1), our Legislature codified actions to quiet title and authorized suits to determine competing parties' interests in land. *Republic Bank v Modular One LLC*, 232 Mich App 444, 448; 591 NW2d 335 (1998), overruled on other grounds by *Stokes v Millen Roofing Co*, 466 Mich 660, 672; 649 NW2d 371 (2002). The statute provides in relevant part:

> Any person, whether he is in possession of the land in question or not, who claims any right in, title to, equitable title to, interest in, or right to possession of land, may bring an action in the circuit courts against any other person who claims (or might claim) any interest inconsistent with the interest claimed by the plaintiff, whether the defendant is in possession of the land or not. [MCL 600.2932(1).]

Here, because plaintiff claims an interest in the disputed property by virtue of tax deeds and quitclaim deeds from persons whom he represents to be Gordon's heirs, we conclude that plaintiff's claim of interest is sufficient to maintain this equitable action to quiet title. See *Republic Bank, supra.* Defendant makes a circular argument that because defendant properly served notice on the owner of the property, the redemption period expired and therefore plaintiff has no standing. We find this argument unpersuasive because we find its premise faulty, as explained below.

We agree with plaintiff's argument, and disagree with defendant's argument, concerning whether defendant's notice to Gordon was in conformity with the requirements of § 140. In relevant part, § 140 provides:

> (3) If the grantee or grantees, or the person or persons holding the interest in the land as described in subsection (1) are residents of a county of this state other than the county in which the land is situated, the notice shall be served on that person by the sheriff of the county in which that person or persons reside or may be found. If a person entitled to notice under subsection (1) is not a resident of this state, the sheriff, if the post office address of the person can be ascertained, shall send to the nonresident person a copy of the notice by certified mail, and attach the receipt indicating postal delivery of the notice to the return and file the return with the county treasurer's office. *If service on the nonresident is not made by mail, the sheriff shall cause a copy of the notice to be served personally on the nonresident*, and when the notice is personally served outside of this state, proof of service shall be made by affidavit of the person making service, which affidavit shall be made before a notary public or other officer authorized to administer oaths. The affidavit, when made outside of this state, shall have attached a certificate of the clerk of the court of record, certifying to the official character of the officer or notary, and the genuineness of the signature of the officer or notary to the jurat of the affidavit, and the sheriff shall return this proof of personal service with the return to the county treasurer's office. [Emphasis supplied.]

* * *

> (5) If the sheriff of the county where the property is located is unable, after careful inquiry, to ascertain the whereabouts or the post office address of the persons on whom notice may be served as prescribed in this section, service of the notice shall be made by publication. The notice shall be published for 4 successive weeks, once each week, in a newspaper published and circulated in the county where the property is located, if there is one. If no paper is published in that county, publication shall be made in a newspaper published and circulated in an adjoining county, and proof of publication, by affidavit of the printer or publisher of the newspaper, shall be filed with the county treasurer. This publication shall be instead of personal service upon the person or persons whose whereabouts or post office address cannot be ascertained as set forth in subsection (3).

The question before us becomes whether if mailing to an out-of-state resident is unsuccessful, must the sheriff proceed next to attempt personal service as provided in subsection 140(3) or may the next step be publication under subsection 140(5). This presents a question of statutory interpretation, which we review de novo. *Ross v Michigan*, 255 Mich App 51, 54; 662 NW2d 36 (2003). The rules of statutory interpretation are well established:

> The primary goal of statutory interpretation is to ascertain and give effect to the Legislature's intent. *Danse Corp v Madison Hts*, 466 Mich 175, 181-182; 644 NW2d 721 (2002). The Legislature is presumed to intend the meaning it plainly expressed. *Guardian Photo, Inc v Dep't of Treasury*, 243 Mich App 270, 276-277; 621 NW2d 233 (2000). "In reviewing the statute's language, every word should be given meaning, and we should avoid a construction that would render any part of the statute surplusage or nugatory." *Wickens v Oakwood Healthcare Sys*, 465 Mich 53, 60; 631 NW2d 686 (2001). However, when the statute's language is clear and unambiguous, judicial construction is neither required nor permitted. *Frankenmuth Mut Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). Conversely, if reasonable minds could differ regarding the meaning of a statute, judicial construction is appropriate. *Yaldo v North Pointe Ins Co*, 457 Mich 341, 346; 578 NW2d 274 (1998). " 'In determining legislative intent, statutory language is given the reasonable construction that best accomplishes the purpose of the statute.' " *Frankenmuth Mut, supra* at 515, quoting *Frankenmuth Mut Ins Co v Marlette Homes, Inc*, 219 Mich App 165, 170; 555 NW2d 510 (1996). [*Id.* at 55.]

Applying the plain language of § 140 to this case, we conclude that a sheriff can obtain service on a nonresident by either certified mail or personal service. Service by certified mail is the first option listed in subsection 140(3) and undoubtedly is the cheapest and most efficient method of effectuating nonresident service. However, the plain language of subsection 140(3) requires that when service on a nonresident is not made by mail, "the sheriff *shall* cause a copy of the notice to be served personally on the nonresident." [Emphasis supplied.] The word "shall" makes the personal service option of subsection 140(3) mandatory, not optional, when service is unsuccessful by certified mail. See *Ross, supra* at 58 ("When used in a statute the term 'shall' connotes a mandatory duty."); *Richard v Ryno*, 158 Mich App 513, 517; 405 NW2d 184

(1987) (strict compliance with the statutory requirements is necessary). If both methods for obtaining nonresident service under subsection 140(3) are unsuccessful, only then is service by publication under subsection 140(5) permitted.

Here, the Manistee County Sheriff was unsuccessful in the attempted service of Gordon by certified mail because the letter was returned "unclaimed;" however, the record is devoid of any indication that the sheriff then attempted personal service on Gordon in California. To the contrary, the record suggests that publication was undertaken pursuant to the authority of subsection 140(5) without an attempt by the sheriff to first serve Gordon personally. Because no personal service was attempted, the requirement of strict compliance means that the redemption period has not run or expired, and defendant has not obtained a vested interest in the property. Consequently, we find that defendant was not entitled to judgment in his favor.

On appeal, plaintiff not only challenges the judgment in favor of defendant, but also asserts that we should order that summary disposition be granted in his favor. However, we find that the record before us is insufficient to determine whether plaintiff may have a superior interest in the property. Plaintiff has not attempted to vest his tax deed interest by filing notice and, on this record, no decision can be made regarding what, if any, interest he acquired by quitclaim deeds from the purported heirs of Gordon. Further, although both parties have attempted to redeem the tax deeds of the other, neither party has argued the consequences of the timing of those redemption attempts relative to the other, or the significance, if any, of the fact that defendant's tax deed is first in time. Because these and possibly other issues remain unresolved, we believe that plaintiff also is not entitled to summary disposition at this time. Thus, we reverse the trial court's judgment in favor of defendant and remand to the trial court for further proceedings consistent with this opinion.

Reversed and remanded. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Brian K. Zahra